

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**RICHARD DEAN MEARS,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 3:06CV95  
(BROADWATER)**

**DOMINIC A. GUTIERREZ,**

**Defendant.**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert (Doc. No. 7), dated October 31, 2006, and petitioner's corresponding objections (Doc. No. 8), filed November 13, 2006. Pursuant to 28 U.S.C. § 636(b)(1), this Court conducted a de novo review of the above. As a result, the Court is of the opinion that the Magistrate Judge's Report and Recommendation (**Doc. No. 7**) should be, and is hereby, **ORDERED** adopted. Accordingly, as set forth in the Magistrate Judge's Report and Recommendation, **Plaintiff's Emergency Petition for Medical Treatment (Doc. No. 1)** is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

**DATED** this 4<sup>th</sup> day of December, 2006.

  
**W. CRAIG BROADWATER**  
**UNITED STATES DISTRICT JUDGE**

